

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4535 OF 2003
ALONG WITH
CRIMINAL APPLICATION NO.4536 OF 2003

Bhupendra B.Parekh ...Applicant

Versus

Vaspaar Containers Ltd. & Anr. ...Respondents

.....

Mr.Naveen Thakore with Mr.Prakash Naik
for Applicant.

Mr.K.V.Saste. A.P.P. for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2004.

P.C.

1. Heard Mr.Thakore for Applicant and Mr.Saste, A.P.P. for Respondent No.2. None appears for Respondent No.1 though served. Affidavit of service has been filed, which indicate that Respondent No.1/complainant has been duly served.

2. The short question that is involved in the present Application is: whether the complaint as filed, makes out a case to indicate complicity of present Applicant who has been named as accused No.7 in the criminal action instituted before the Additional Chief Metropolitan Magistrate, 24th Court, Borivali, by the Respondent No.1? It is relevant to note that originally the complaint was filed only against the Company. Later on, on the application made by the complainant on 29th April 2003, six persons came to be named as accused on the assertion that they were the Directors of the Company, and whose names were not known to the Complainant at the time of filing of the complaint. The fact remains that the complaint as filed makes no reference to the involvement of the Applicant. It is not the case of the complainant that the Applicant is the signatory to the cheque in question. There is no assertion in the complaint as is required under Section 141 of the Negotiable Instruments Act (hereinafter referred to as the 'Act'), so as to indicate the complicity of the Applicant/accused No.7. Merely being a Director, by itself, will not make the person liable for

criminal action under the provisions of the Act. I have decided this issue on **14th December 2004** in **Criminal Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr.**

3. Even on fair reading of the present complaint, there is no assertion against the Applicant as is required by the Mandate of Section 141 of the Act, so as to make the Director of the Company liable for the offence committed by the Company. If it is so, criminal action against the accused No.7 cannot proceed in law.

4. Accordingly these Applications succeed and are allowed in terms of prayer clause (a), insofar as Applicant/accused No.7 is concerned.

A.M.KHANWILKAR, J.